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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/540,604

05/15/2006

Carl-Johan Hoijer

P05,0232

9006

26574

7590

10/02/2009

SCHIFF HARDIN, LLP
PATENT DEPARTMENT
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EXAMINER

ALTER, ALYSSA MARGO

ART UNIT

PAPER NUMBER

3762

MAIL DATE

DELIVERY MODE

10/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/540,604	Applicant(s) HOIJER, CARL-JOHAN	
	Examiner Alyssa M. Alter	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 7-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 7-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>5/15/06</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 7-12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 7 is vague and appear to be a method claim since it provides no further structure, but a mere recitation of intended use for such structure.

As to claim 8, the claim is vague as to how the impedance measuring unit measures the impedance through the pulse generator.

As to claims 9 and 10, the claims are vague and do not clearly claim the subject matter since the electrodes are not positively recited, but merely inferentially included.

As to claims 11-12, the claims are vague and appear to be method claims since they provides no further structure, but a mere recitation of intended use for such structure.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Art Unit: 3762

1. Claims 7-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Chirife (US 4,865,036). Chirife discloses an antitachyarrhythmia pacemaker with a housing, a cardioverter pulse generator, cardiac signal detector (sense circuit 50), arrhythmia detector (detector circuit 52) and impedance measuring unit (PEP measuring 80) Chirife discloses in col. 5, lines 20-21, "the use of intracardiac impedance measurements" to derive PEP measurements. Furthermore, Chirife discloses in col. 5, lines 56-63, "an atrial (P-wave) or, alternatively, a ventricular (QRS-wave) sense circuit is identified by numeral 50 and a detector circuit 52 is coupled thereto for determining whether or not a P-wave (R-wave) is present. If not, the stimulator may be arranged to revert to its pacing mode (block 53) which may be either AAI, VVI or any of the other dual-chamber pacing modes". Therefore, the examiner considers Chirife to disclose the employment of a controller to arrange the pacing modes. Furthermore, Chirife necessarily includes a controller in the pacemaker.

As to claims 7-12, the functional language and introductory statement of intended use of claims 7-12 have been carefully considered but are not considered to impart any further structural limitations over the prior art. Since Chirife utilizes a controller and impedance measuring circuit as claimed by the Applicant, Chirife is therefore capable of being used in the arrhythmia detection and treatment system. In addition nothing prevents Chirife from modifying the arrhythmia detection and treatment. Therefore, the controller and impedance measuring circuit are capable of being employed to deliver specific arrhythmia treatment in coordination with the P-wave.

Art Unit: 3762

Additionally, as to claims 7-8, it has been held that the recitation that an element is “adapted to” perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. been Therefore, all that is required is merely the capability to interact with the atrium and the ventricle, which Chirife accomplishes.

As to claims 9-10, figure 1 depicts a multi-electrode pacing/sensing lead 12, with a tip electrode 14 and two ring electrodes 16 and 18. Additionally the system includes a proximal indifferent electrode 15.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alyssa M. Alter whose telephone number is (571)272-4939. The examiner can normally be reached on M-F 8am to 4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George R Evanisko/
Primary Examiner, Art Unit 3762

/Alyssa M Alter/
Examiner
Art Unit 3762